

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KEON WILLIAMS,

Plaintiff,

v.

SHAWN THORNHILL, *et. al.*,

Defendants.

Case No. 3:23-CV-00002-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

Before the Court is Plaintiff Keon Williams's ("Williams"), application to proceed *in forma pauperis*, (ECF No. 1), and civil rights complaint, (ECF No. 1-1). For the reasons stated below, the Court recommends that Williams's *in forma pauperis* application, (ECF No. 1), be denied as moot, and his complaint (ECF No. 1-1), be dismissed without prejudice and without leave to amend.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to the LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with
3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely
5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Williams cannot pay the filing
8 fee, thus the Court recommends that Williams not be assessed the filing fee and the
9 motion be denied as moot. (ECF No. 1.)

10 **II. SCREENING STANDARD**

11 Prior to ordering service on any Defendant, the Court is required to screen an *in*
12 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
13 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
14 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint
15 for the enumerated reasons). Such screening is required before a litigation proceeding
16 *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
17 (9th Cir. 2015).

18 "[T]he court shall dismiss the case at any time if the court determines that – (A)
19 the allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or
20 malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks
21 monetary relief against a defendant who is immune from such relief." 28 U.S.C. §
22 1915(e)(2)(A), (B)(i)-(iii).

23 Dismissal of a complaint for failure to state a claim upon which relief may be
24 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
25 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint
26 under this statute, the court applies the same standard as is applied under Rule 12(b)(6).
27 See, e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for
28 determining whether a plaintiff has failed to state a claim upon which relief can be granted

1 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)
2 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
3 on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
4 2000) (citation omitted).

5 The Court must accept as true the allegations, construe the pleadings in the light
6 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
7 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
8 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
9 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

10 A complaint must contain more than a “formulaic recitation of the elements of a
11 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
12 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
13 “The pleading must contain something more. . . than. . . a statement of facts that merely
14 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
15 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
16 relief that is plausible on its face.” *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662,
17 678 (2009).

18 A dismissal should not be without leave to amend unless it is clear from the face
19 of the complaint the action is frivolous and could not be amended to state a federal claim,
20 or the district court lacks subject matter jurisdiction over the action. See *Cato v. United*
21 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
22 Cir. 1990).

23 **III. SCREENING OF COMPLAINT**

24 In his complaint, Williams sues Defendants Shawn Thornhill, Bryce Shields, Karen
25 Stephen, and the State of Nevada (collectively referred to as “Defendants”) under 42
26 U.S.C. § 1983. (See ECF No. 1-1.) Williams’s complaint, while vague, seems to ask that
27 the Court “remove” his state court criminal case to federal court because Defendants have
28 violated Williams’s due process rights based on what he alleges is a wrongful arrest. (*Id.*

1 at 2.) Thus, Williams’s filing directly relates to his underlying, ongoing criminal case. It is
2 unclear what relief Williams is requesting, but from what the Court can discern, Williams
3 is asking that his state criminal case be dismissed. (*Id.* at 28.)

4 It appears that Williams is asking the court to intervene in ongoing state criminal
5 proceedings. However, the *Younger* abstention doctrine prevents federal courts from
6 interfering with pending state criminal proceedings even if there is an allegation of a
7 constitutional violation, unless there is an extraordinary circumstance that creates a threat
8 of irreparable injury. *Younger v. Harris*, 401 U.S. 37 (1971). The Supreme Court has
9 stated that “federal-court abstention is required” when there is “a parallel, pending state
10 criminal proceeding.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013); *see also*
11 *Heck v. Humphrey*, 512 U.S. 477, 487 n.8 (1994) (noting that when a state criminal
12 defendant brings a federal civil rights lawsuit while his criminal charges are pending,
13 abstention is “an appropriate response to the parallel state-court proceedings”).

14 To determine if *Younger* abstention applies, federal courts look to whether the
15 state criminal proceeding is “(1) ongoing, (2) implicate[s] important state interests, and
16 (3) provide[s] an adequate opportunity... to raise constitutional challenges.” *Herrera v.*
17 *City of Palmdale*, 918 F.3d 1037, 1044 (9th Cir. 2019) (internal quotation marks omitted);
18 *see also Younger*, 401 U.S. 37. The Ninth Circuit also requires that “[t]he requested relief
19 must seek to enjoin—or have the practical effect of enjoining—ongoing state
20 proceedings.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758
21 (9th Cir. 2014) (citing *AmehsourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir.
22 2007)). Because it appears Williams’s criminal case is still pending, all prerequisites of
23 the *Younger* abstention doctrine are present. Williams is the subject of an ongoing
24 criminal proceeding in state court that has not reached final adjudication. The State of
25 Nevada has an important interest in protecting the public through the prosecution of
26 criminal proceedings. Further, the state court criminal proceedings would afford an
27 opportunity for Williams to raise the constitutional claims asserted in the Complaint.

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1 **A. State of Nevada as a Defendant**

2 While the Court ultimately recommends dismissal without prejudice, the Court
3 notes that Williams cannot raise 42 U.S.C. § 1983 or state law claims against the State
4 of Nevada based on Eleventh Amendment sovereign immunity. *See Brooks v. Sulphur*
5 *Springs Valley Elec. Co-op.*, 951 F.2d 1050, 1053 (9th Cir. 1991) (holding that “[t]he
6 Eleventh Amendment prohibits federal courts from hearing suits brought against an
7 unconsenting state” and that “[t]he Eleventh Amendment’s jurisdictional bar covers suits
8 naming state agencies and departments as defendants, and applies whether the relief
9 sought is legal or equitable in nature”); *see also Will v. Michigan Dep’t of State Police*,
10 491 U.S. 58, 65 (1989) (holding that states are not persons for purposes of § 1983); *see*
11 NRS § 41.031(3) (stating that the State of Nevada does not waive its Eleventh
12 Amendment immunity). The Ninth Circuit has explicitly held that 28 U.S.C. § 1367, the
13 supplemental jurisdiction statute, “does not abrogate state sovereign immunity for
14 supplemental state law claims.” *Stanley v. Trustees of California State Univ.*, 433 F.3d
15 1129, 1133-34 (9th Cir. 2006).

16 **B. Judicial Defendants**

17 Finally, the Court notes that Defendant Karen Stephens, who is a Justice Court
18 Judge, and Defendant Bryce Shields, who is a District Attorney, are absolutely immune
19 from suit under § 1983. *See Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988)
20 (“Judges are absolutely immune from damage actions for judicial acts taken within the
21 jurisdiction of their courts.... A judge loses absolute immunity only when [the judge] acts
22 in the clear absence of all jurisdiction or performs an act that is not judicial in nature.”);
23 *See Imbler v. Pachtman*, 424 U.S. 409, 427, 430 (1976) (state prosecutors are absolutely
24 immune from § 1983 actions when performing functions “intimately associated with the
25 judicial phase of the criminal process.”).

26 Based on all of the above, the Court recommends that the complaint be dismissed
27 without prejudice and without leave to amend.

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1 **IV. CONCLUSION**

2 For good cause appearing and for the reasons stated above, the Court
3 recommends that Williams's application to proceed *in forma pauperis*, (ECF No. 1), be
4 denied as moot, and his complaint, (ECF No. 1-1), be dismissed without prejudice and
5 without leave to amend.

6 The parties are advised:

7 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
8 Practice, the parties may file specific written objections to this Report and
9 Recommendation within fourteen days of receipt. These objections should be entitled
10 "Objections to Magistrate Judge's Report and Recommendation" and should be
11 accompanied by points and authorities for consideration by the District Court.

12 2. This Report and Recommendation is not an appealable order and any
13 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
14 District Court's judgment.

15 **V. RECOMMENDATION**

16 **IT IS THEREFORE RECOMMENDED** that Williams's application to proceed *in*
17 *forma pauperis*, (ECF No. 1), be **DENIED AS MOOT**;

18 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-
19 1); and,

20 **IT IS FURTHER RECOMMENDED** that Williams's complaint, (ECF No. 1-1), be
21 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND.**

22 **DATED:** January 6, 2023.

23 
24 **UNITED STATES MAGISTRATE JUDGE**